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March 12, 1996

William F. Caton
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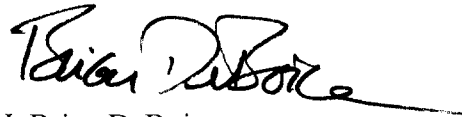
Re: Uniform Rate-Setting Methodology, CS Docket No. 95-174

Dear Mr. Caton

On behalf of MediaOne, Inc. ("MediaOne"), there are herewith submitted an original and 9 copies of the "Reply Comments of MediaOne" for consideration by the Commission in connection with the above-referenced docket.

Any questions concerning this submission may be directed to the undersigned.

Very truly yours



J. Brian DeBoice

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BEFORE THE

Federal Communications Commission

In the Matter of)
)
Implementation of Sections of)
the Cable Television Consumer)
Protection and Competition Act)
of 1992 -- Rate Regulation)
)
Uniform Rate-Setting Methodology)

CS Docket No. 95-174

MAR 12 1995

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REPLY COMMENTS OF MEDIAONE

MediaOne, Inc. ("MediaOne"), by counsel, hereby submits its reply comments concerning the Commission's Notice of Proposed Rulemaking, FCC 95-472 (rel. Nov. 29, 1995) ("NPRM"), in the above-referenced proceeding.

The cable industry -- from the largest MSOs to the smallest cable operators -- has voiced its unqualified support for the Commission's proposal to allow uniform cable rate-setting. The industry has offered a variety of thoughtful, constructive proposals to make uniform rate-setting work, and work well, not just for cable operators, but for cable subscribers, local franchising authorities ("LFAs"), the Commission and the public as a whole.

Across the table in this policy debate, a few LFAs have expressed misgivings about uniform rate-setting. Their concerns are occasionally legitimate, although more often not. Even the legitimate concerns expressed pose no impediment to uniform rate-setting, however. They may be satisfied by rules that prevent rate averaging from shifting an undue portion of the overall revenue requirement from one jurisdiction's rates to those of another.

I. Cable Industry Comments

Turning first to the comments of cable operators, there is essential unanimity on each of the following points:

- Both the proposed BST rate reduction method and the proposed BST rate averaging method should be available for use, and operators should also be able to choose an intermediate variant of the two methods.^{1/}
- Operators should have substantial flexibility in choosing their uniform rate areas, so that uniform rates may be set accross ADI or DMA boundaries without the need to seek special prior authorization from the Commision.^{2/}
- Uniform rates should be permitted for multiple systems, and also for combinations of regulated and unregulated franchise areas, provided that the uniform rates (or rates below those rates) are charged in the unregulated areas.^{3/}

^{1/} E.g., NCTA Comments at 10-11; Cablevision Systems Corp. (“Cablevision”) Comments at 10-11; Cole, Raywid & Braverman (“CR&B”) Comments at 10-11; Ohio Cable Telecommunications Association (“OCTA”) Comments at 9-10; MediaOne Comments at 2-3; TCI/Continental Cablevision (“TCI/Continental”) Comments at 15; Time Warner Comments at 5-6.

^{2/} E.g., NCTA Comments at 8-9; Adelphia Communications Corp. (“Adelphia”) Comments at 3-4; Blade Communications, Inc. (“Blade”) Comments at 4-5; Cablevision Comments at 9-10; CR&B Comments at 4-5; OCTA Comments at 3-5; Time Warner Comments at 13-14. In light of the comments filed, MediaOne agrees that the Commission should adopt a flexible test allowing cable operators the discretion to establish uniform rate areas that cross ADI or DMA boundaries, where the system or systems are otherwise qualified for uniform rate-setting.

^{3/} E.g., NCTA Comments at 7; Cablevision Comments at 14-15; CR&B Comments at 3-7; MediaOne Comments at 3-5; TCI/Cablevision Comments at 14-15; Time Warner Comments at 19-20.

- Operators should be free to itemize franchise-related costs.^{4/}
- Operators should be permitted to establish uniform equipment rates.^{5/}
- Operators should be permitted to advertise uniform rates with an appropriate “tag line” indicating that the rates do not include any applicable local government franchise fees or assessments, which will vary depending upon the location.^{6/}
- There should be no “phase-in” or “cap” applied to rate changes resulting from uniform rate-setting.^{7/}
- Complete uniformity of channel lineups should not be a precondition to uniform rate-setting.^{8/}

Two important issues, however, have generated a variety of proposals. One is the degree of similarity of service offerings necessary to qualify for uniform rate-setting. The other involves the procedures that should apply in connection with FCC and LFA review of uniform rates.

^{4/} E.g., NCTA Comments at 11; Cablevision Comments at 16-17; CR&B Comments at 12-15; OCTA Comments at 12; MediaOne Comments at 9-10; TCI/Continental Comments at 8-9; Time Warner Comments at 6-9.

^{5/} E.g., NCTA Comments at 12-13; Cablevision Comments at 12-14; CR&B Comments at 15-16; OCTA Comments at 16; MediaOne Comments at 7.

^{6/} E.g., NCTA Comments at 15-16; Cablevision Comments at 16-17; CR&B Comments at 13-14; Time Warner Comments at 9-13.

^{7/} E.g., NCTA Comments at 11 n.15; Adelphia Comments at 4-5; Cablevision Comments at 15-16; OCTA Comments at 16-17; MediaOne Comments at 8.

^{8/} E.g., NCTA Comments at 7-8; Adelphia Comments at 4; CR&B Comments at 8-9; MediaOne Comments at 5-6; TCI/Continental Comments at 4-7; Time Warner Comments at 14-16.

A. Similarity of Service Offerings

Cable operators have offered several constructive suggestions regarding the degree of similarity of service offerings that should exist to make uniform rate-setting per se permissible.^{2/} After reviewing the various proposals, MediaOne believes that the two-part test suggested by TCI/Continental provides the best all-around solution. See TCI/Continental Comments at 4-14. The test would make uniform rate-setting per se permissible if (1) the total BST/CPST regulated channel count for each jurisdiction within the uniform rate area is either (a) within two channels of, or (b) not more than ten percent below, the highest number of total BST/CPST regulated channels for any jurisdiction within the uniform rate area; and (2) the permitted combined total BST/CPST rate for each jurisdiction within the uniform rate area is not more than five percent above the combined total of the uniform BST and CPST rates for the area (as derived by the Commission's second proposed methodology involving weighted averaging of BST rates). This test constitutes, MediaOne believes, an effective means of ensuring that services are sufficiently similar, both in nature and in price, to make uniform rate-setting per se appropriate.

MediaOne proposes one minor modification to a collateral aspect of TCI/Continental's proposed test. Regarding the channel count element of the test, TCI/Continental have proposed (Comments at 10) that PEG and franchise-required local origination ("LO") channels not be

^{2/} E.g., CR&B Comments at 8-9 (programming costs and number of regulated channels do not vary by more than 15%); MediaOne Comments at 5-6 (75% or more of BST channels (other than PEG channels) and CPST channels carry identical programming); TCI/Continental Comments at 4-14 (the number of regulated channels does not vary by more than the greater of 2 channels or 10%, and the highest combined permitted BST/CPST rate is no more than 5% above the uniform combined BST/CPST rate); Time Warner Comments at 16 (differences in PEG, access, must-carry and other channels beyond operator control disregarded; programming costs for regulated channels do not vary by more than 10%).

included in the regulated channel counts, if the operator itemizes costs related to such channels. Not to count required PEG or LO channels could result in a jurisdiction being excluded from the uniform rate area simply because it requires a significantly greater number of PEG or LO channels than do the surrounding jurisdictions. MediaOne therefore suggests that operators should be permitted to include such channels for purposes of the first (regulated channel count) element of the proposed test, whether or not the operator itemizes some, all or none of the franchise-imposed costs associated with such channels.

B. Procedures for Review of Uniform Rates

MediaOne supports the proposal voiced by the NCTA and others that uniform rates be permitted to take effect automatically, after the pertinent review period (ninety days in the case of a Form 1240 filing; thirty days in the case of a Form 1210 filing).^{10/} MediaOne also agrees that LFAs should not have the authority to toll uniform rate implementation by an adverse rate order issued during the review period. As the Commission recognized in the NPRM (at ¶22), the appropriate remedy for mistakes in uniform rate-setting is the annual “true up” mechanism, not mid-cycle rate adjustments or the piecemeal issuance of refunds. The Commission should also adopt the suggestion of several commentators that FCC review proceedings involving the same uniform rate be consolidated.^{11/}

^{10/} NCTA Comments at 13-15; see also, e.g., CR&B Comments at 11-12; MediaOne Comments at 8-9; Time Warner Comments at 17-19; cf. OCTA Comments at 13-15 (proposing exclusive FCC jurisdiction to review initial uniform rates and a streamlined, accelerated process of LFA and FCC review thereafter).

^{11/} E.g., NCTA Comments at 15 n.28; OCTA Comments at 15; Time Warner Comments at 18. Where uniform rate-setting creates interdependency between the uniform BST and CPST rates, as in the Commission’s first proposed methodology involving BST rate reduction,

II. LFA Comments

Several LFAs have questioned whether the averaging process inherent in uniform rate-setting will result in unreasonable rate increases or the potential for anticompetitive cross-subsidy.^{12/} The potential for unreasonable “rate swings” resulting from uniform rate averaging can only exist if the rate components being averaged (and their corresponding service components) are insufficiently similar to make rate averaging and rate uniformity a reasonable approach to rate-setting for the areas involved. A variety of tests to prevent instances of unreasonable rate averaging have been proposed by the cable industry (see comments cited in note 9, supra), and any one of these tests, or a variant, could serve to preclude the type of unreasonably high or low uniform rates that the commenting LFAs fear. As noted earlier, MediaOne believes the test proposed by TCI/ Continental is (with one minor modification) to be preferred. That test would, among other things, limit per se permissible uniform rate-setting to jurisdictions with a combined permitted BST/CPST rate that does not fall more than five percent above the uniform combined BST/CPST rate. This limitation would effectively render impossible the unreasonable rate shifts these LFAs fear may result from uniform rate-setting.^{13/}

consolidation of CPST rate review proceedings and appeal proceedings involving an LFA rate order would also be appropriate.

^{12/} E.g., Comments of Cape Coral, Florida, et al. (“Cape Coral”) at 3-4; Comments of Rock Hill, South Carolina (“Rock Hill”) at 2-3; see also Comments of National Association of Telecommunications Officers and Advisors (“NATOA”) at 5-6.

^{13/} The TCI/Continental test would, for example, prevent the City of Rock Hill from being included in the same uniform rate area as the surrounding jurisdictions it refers to in its comments. See Rock Hill Comments at 2-3. Assuming the correctness of the subscriber and rate information Rock Hill supplies, the current permitted combined BST/CPST rate for the surrounding jurisdictions (\$26.20) would be 8.3% above the calculated combined uniform

Several LFAs also express concern that uniform rate-setting could make LFA rate review more burdensome.^{14/} This would not be the case. No matter which uniform rate-setting methodology were to be employed, the same uniform BST rate would be in effect throughout the uniform rate area. There would thus be an obvious incentive for LFAs within that area to conduct one joint review of the uniform BST rate. Such a practice would render LFA rate review more efficient, less expensive and, doubtless, more effective. Moreover, the LFA's task -- determining whether the cable operator's calculated permitted rate for the LFA's jurisdiction is in accordance with FCC rules and, therefore, reasonable -- would not change under uniform rate setting.^{15/} The fact that basic arithmetic averaging calculations are employed to derive a uniform BST rate plainly imposes no significant added burden on an LFA's rate review process.

Some comentors suggest that consumers may be "confused" by implementation of uniform rates^{16/} or that uniform rates have little value to cable subscribers or to the public.^{17/} These commentors are incorrect. In most if not all instances, uniform rates will be implemented as part of the normal rate adjustment process. This will not lead to any greater number of rate adjustments

BST/CPST rate of \$24.20, which would exceed the 5% limit contained in TCI/Continental's proposed test. Under the test, therefore, Rock Hill could not be included in the same uniform rate area as the surrounding jurisdictions.

^{14/} Cape Coral Comments at 6; see also NATOA Comments at 6.

^{15/} Clearly, an LFA would not be required to conduct a review of calculated permitted BST rates for other LFA jurisdictions, nor would a given LFA have any jurisdictional authority, under the federal statutory scheme, over the permitted BST rate applicable in some other jurisdiction. E.g., 47 U.S.C. §543(a); 47 C.F.R. §76.910.

^{16/} NATOA Comments at 3-4.

^{17/} Rock Hill Comments at 1-2.


than would otherwise occur. As the comments of many cable operators make plain, uniform rates will clearly reduce confusion and increase satisfaction among cable subscribers and potential subscribers. This is but one of the many benefits uniform rates offer. The proposed uniform rates will be simple, efficient and fair. Current fragmented rates are complicated, inefficient and often arbitrary. It is not hard to decide which type of rates will best serve the public interest -- including the interests of marketplace efficiency and competition.

III. Conclusion

For the foregoing reasons, the Commission should proceed expeditiously to adopt regulations of the type discussed allowing uniform cable rate-setting.

Respectfully Submitted

MEDIAONE, INC.

By: 
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Dated: March 12, 1996

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